

GARY JOHN DMOCH & ASSOCIATES
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Attorneys for Defendant
ODESSA RESTAURANT, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CLEMENTE DELGADO,

Plaintiffs,

v.

ODESSA RESTAURANT, INC.,

Defendants.

CIVIL ACTION NO. 06-5129
(RJH)

ANSWER AND JURY
DEMAND

The Defendant, **ODESSA RESTAURANT, INC.**, by counsel, for its answer to Plaintiffs' complaint, states as follows:

COMPLAINT

1. Defendant denies the allegations made in paragraphs "1" through "4" of the complaint.

JURISDICTION AND VENUE

2. Defendant denies the allegations made in paragraphs "5" through "9" of the complaint.

COUNT I

3. Defendant denies the allegations made in paragraphs "11" through "13" of the complaint.

COUNT II

4. Defendant denies the allegations made in paragraphs "15" through "20" of the complaint.

FIRST AFFIRMATIVE DEFENSE

5. The complaint fails to state facts sufficient to constitute a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

6. The Plaintiff lacks standing to sue.

THIRD AFFIRMATIVE DEFENSE

7. This Court lacks personal jurisdiction over the answering Defendant in that service of process is defective and not in conformity with the Federal Rules of Civil Procedure.

FOURTH AFFIRMATIVE DEFENSE

8. This Court lacks jurisdiction pursuant to FLSA over the answering Defendant in that the Defendant is not an entity with gross earnings in excess of \$500,000.00.

FIFTH AFFIRMATIVE DEFENSE

9. This Court lacks jurisdiction pursuant to FLSA since Plaintiff has not filed and complied with the pre-requisites to commence an action under the FLSA.

SIXTH AFFIRMATIVE DEFENSE

10. The complaint fails to set forth a cause of action upon which relief may be granted in that Plaintiff was never employed by Defendant in any capacity.

SEVENTH AFFIRMATIVE DEFENSE

11. Plaintiff's complaint is barred by the doctrine of unclean hands.

WHEREFORE, Defendant having appeared and fully answered the Plaintiff's complaint, prays that Plaintiff's complaint be dismissed and that Plaintiff take nothing thereby; prays for judgment against the Plaintiff in an amount to be proven at trial, court costs, and such other and further relief as the Court shall deem just and proper.

DEMAND FOR A JURY

The Defendant hereby demands a trial by jury.

Date: Flushing, New York
August 3, 2006

Yours, etc.,

GARY JOHN DMOCH & ASSOCIATES

By: _____

Gary J. Dmoch, (GD 9667)

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Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Answer and Jury Demand has this 3rd day of August, 2006 been sent via e-mail at JAZeller@Zellerlegal.com and first class mail to counsel for Plaintiff, Clemente Delgado, at the Law Offices of Justin A. Zeller, P.C., 222 Broadway, 19th Floor, New York, New York 10038.

This 3rd day of August, 2006.



Gary J. Dmoch